

**COPY**

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

MELVIN LOWE,

Plaintiff/Petitioner,

Vs.

CIVIL ACTION NO.  
2:05-CV-0495

MONTGOMERY COUNTY BOARD  
OF EDUCATION,

Defendant/Respondent.

\* \* \* \* \*

DEPOSITION OF DAVID SIKES, taken pursuant  
to stipulation and agreement before Patricia G.  
Starkie, Registered Diplomate Reporter, CRR, and  
Commissioner for the State of Alabama at Large, in  
the Law Offices of Hill, Hill, Carter, Franco, Cole  
& Black, 425 South Perry Street, Montgomery,  
Alabama, on Tuesday, January 24, 2006, commencing  
at approximately 9:10 a.m.

\* \* \* \* \*

Blumberg No. 5137

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1           this position?

2           A.    If I'm not mistaken, he contacted my  
3           secretary.

4           Q.    Do you know if he had spoken to anyone else  
5           prior to contacting your secretary about  
6           the job?

7           A.    No, ma'am, I don't know.

8           Q.    Do you know if he had spoken to anyone at  
9           central office about the job prior to  
10          contacting your secretary?

11          A.    I have no idea.

12          Q.    Did you interview Mr. Lowe for the  
13          position?

14          A.    Yes, ma'am.

15          Q.    What was your impression of Mr. Lowe based  
16          on your interview?

17          A.    He had a very good interview. The  
18          questions I asked, he was very  
19          knowledgeable, you know. It was -- seemed  
20          to be a likable person.

21          Q.    Did you have any concerns with regard to  
22          Mr. Lowe when you interviewed him or  
23          reservations, I guess?

1 A. Not particularly, no, ma'am. We were in a  
2 situation where at that point in time we  
3 had been told that we were going to have --  
4 I want to say 20 openings -- not 20 --  
5 excuse me. We were going to have 20  
6 special ed teachers, which would have been  
7 in excess of -- which would have left us  
8 with about -- at that time about ten job  
9 openings. And so at that point, I had  
10 no -- I had no reservations. I mean, he  
11 seemed to be okay.

12 Now, one practice I do is, you know,  
13 people can come in to interview, and they  
14 can sound wonderful, but I do check  
15 backgrounds on people.

16 Q. Okay. And did you learn anything that  
17 caused you any concern when you checked  
18 Mr. Lowe's background?

19 A. Yes, ma'am. There was a question on his  
20 certification in special education.

21 Q. And what kind of certification was needed  
22 for this job?

23 A. Special ed certification.

1 Q. And you said there was a question of it.  
2 Are you aware whether or not he had the  
3 special ed certification?

4 A. At that point in time, he did not.

5 Q. What did you do when you learned that he  
6 did not have the certification?

7 A. When I contacted -- he contacted me I want  
8 to say like the next day and sent some --  
9 he sent some records from where --  
10 copies -- not records, but actual copies of  
11 records where he had supposedly done some  
12 work. And I contacted him and told him  
13 until he got certified, you know, that --  
14 you know, once that happened, you know, we  
15 would see what we could do.

16 Q. Okay.

17 A. And until -- I mean, until right now, I  
18 don't even know if he is certified as I  
19 talk.

20 Q. Did you ever speak with Jimmy Barker about  
21 Mr. Lowe's certification?

22 A. Yes, ma'am. I contacted Mr. Barker, and he  
23 told me that he was not sure that he was

1 certified.

2 Q. Did you call Mr. Barker on the phone?

3 A. Uh-huh (positive response). Contacted him  
4 by phone.

5 Q. When he told you that he wasn't sure if  
6 Melvin Lowe was certified, did you ask that  
7 he verify Melvin Lowe's credentials?

8 A. He said that he would -- he told me he  
9 would check with Ms. Jackson next door to  
10 him -- I'm thinking that's her name, but  
11 right at this point, her name evades me. I  
12 believe it's Ms. Jackson -- next door that  
13 does certification. He was going to check  
14 with her. And then I want to say in a  
15 couple of days, Ms. Jackson called me -- it  
16 may have been that afternoon or the next  
17 day she called me -- to tell me at this  
18 point, he was not certified.

19 Q. Okay. Are you familiar with emergency  
20 special ed certification?

21 A. I'm familiar with emergency certification,  
22 yes, ma'am, whatever subject it may be in.

23 Q. Have you ever hired a teacher who had an

1 emergency certification?

2 A. Yes, ma'am. Not in special ed, though.

3 Q. Okay. What positions were they hired for?

4 A. I want to say we had a science teacher.

5 Q. What was the procedure for obtaining that  
6 emergency certification?

7 A. I don't know, ma'am. I didn't do it. I  
8 had -- they had to work that out with  
9 central office and had to work that out  
10 with the Alabama Department of Education.  
11 I didn't -- I try not to get involved in  
12 that because, you know, that spends a lot  
13 of time that I don't need to do worrying  
14 about somebody else.

15 Q. Okay. Did you recommend Melvin Lowe for  
16 the position, the special ed position?

17 A. No, ma'am.

18 Q. Who was hired for that position or who was  
19 recommended for that position?

20 A. Now, this is going to be detail, okay?  
21 Because like I say, when he came to  
22 interview, we had 20 -- we were going to  
23 have 20 teachers. I want to say I

1 interviewed Mr. Lowe at the beginning, say,  
2 the first ten days of July. I don't really  
3 remember. But in the transition between  
4 interviewing Mr. Lowe and the two weeks  
5 following, we were cut from 20 positions.  
6 It went down to 17, then it went down to  
7 13, then it went down to where we were  
8 going to have to give one back because of  
9 funding. So at that point, we didn't -- I  
10 didn't know if I was going to hire anybody  
11 or not hire anybody or what the deal was.  
12 Okay? So there was just a two-week or  
13 three-week lull in there until we found out  
14 exactly how many units of special ed we  
15 were going to have. So that's -- that's --  
16 at that point, during those two weeks, we  
17 didn't really, you know, have a situation  
18 to hire anybody.

19 Q. Okay. Did you ever ultimately hire  
20 somebody?

21 A. Yes, ma'am.

22 Q. And who was ultimately hired?

23 A. Now, I can tell you the ones I hired last

1 summer. I can't tell you in order of who  
2 hired when or whatever.

3 I can tell you that there is a  
4 Ms. Bailey that was hired after school  
5 started because once our numbers came in to  
6 special ed, they realized we had to have  
7 some more units.

8 There was Ms. McCauley, who was a  
9 transfer from Goodwyn or had been employed  
10 at Goodwyn. I won't say transferred. She  
11 may have been pink slipped, but she had  
12 been at Goodwyn the year before.

13 A transfer from Floyd Elementary  
14 School, Ms. Howard.

15 There was a teacher named Mr. Floyd we  
16 hired during the summer.

17 There was a transfer from Houston  
18 Hills, Ms. Parducci, P-A-R-D-U-C-C-I.

19 I'm thinking there's somebody I'm  
20 leaving out. I know there's somebody --  
21 there's somebody I'm not --

22 Q. Okay.

23 A. But anyway, there was probably seven once



1 we got into the fifth day of school.

2 Q. And all seven of these people were hired to  
3 service Lee High School?

4 A. Yes, ma'am.

5 Q. And did all seven of these people have  
6 special ed certification?

7 A. Yes, ma'am.

8 Q. Did all seven of these people have previous  
9 experience teaching special ed?

10 A. Oh, wait. Can I add this? Ms. McCall.  
11 Okay. And we hired -- we had hired -- now,  
12 she was hired as soon as school got out.  
13 She was hired like in June.

14 Q. Okay.

15 A. Everybody except Ms. McCall had had  
16 experience as a special ed teacher.  
17 Ms. McCall was a special ed aide that had  
18 just obtained her certification. The rest  
19 of them have been special ed teachers.

20 Q. Okay. Did you ever have any conversations  
21 with Mr. Barker regarding Melvin Lowe when  
22 you sought to hire him for this special ed  
23 position?

1 MS. CARTER: Object to the form.

2 Q. Aside from the initial conversation where  
3 you asked for him to check on Melvin's  
4 certification?

5 A. No, ma'am.

6 Q. Did Mr. Barker ever tell you that you had  
7 to hire a woman for the position?

8 A. No, ma'am.

9 Q. Has he ever told you that you had to hire a  
10 black person or a white person to fill a  
11 position?

12 A. No, ma'am.

13 Q. Did you ever have --

14 MS. CARTER: Y'all both talk  
15 fast. I do, too. Make sure  
16 you let her finish the  
17 question, because she's trying  
18 to type everything down.

19 A. No, ma'am.

20 Q. Have you ever had any conversations with  
21 Dr. Purcell with regard to Melvin Lowe?

22 A. No, ma'am.

23 Q. Have you ever had any conversations with

1 Carolyn Hicks about Melvin Lowe?

2 A. No, ma'am.

3 Q. And do you know of any reason why Melvin  
4 Lowe wasn't hired for the position other  
5 than his lack of special ed certification?

6 A. No, ma'am.

7 (Brief recess.)

8 A. Can I add something to what I said while  
9 ago?

10 Q. Yes.

11 A. I did talk to Ms. Hicks. I forgot about  
12 it. I talked to Ms. Hicks prior to talking  
13 to Mr. Barker, because they were in  
14 transition of moving from him hiring  
15 secondary to her hiring secondary, and all  
16 she told me was to check with Mr. Barker to  
17 make sure he was certified because she  
18 didn't know.

19 Q. Okay. Have you ever gotten an emergency  
20 certificate?

21 A. Me?

22 Q. Yes.

23 A. (Witness shakes head from side to side.)

1 nontraditional, but not an emergency.

2 Q. Okay.

3 A. Okay.

4 Q. Do you know if the emergency certification  
5 is something that's initiated by the  
6 applicant or the school district?

7 A. I don't -- I would say that it could be by  
8 either one, I think. I'm not sure.

9 Q. Okay. And I know you said you had hired  
10 somebody once before, I think a science  
11 teacher?

12 A. Yes, ma'am.

13 Q. Was that a simple process for the science  
14 teacher to obtain that emergency  
15 certification?

16 MS. CARTER: Object to the form.

17 Q. You can still answer.

18 A. Okay. I don't know. I just know that we  
19 were short of science teachers, we didn't  
20 have any, and the young lady had a degree  
21 in just basic chemistry, and I contacted  
22 downtown and they worked with her. I don't  
23 know exactly what -- how the process went

1 through.

2 Q. How long did it take for her to receive the  
3 certification?

4 A. I want to say it took around two to three  
5 weeks. I don't know for sure, though.

6 Q. Were you able to employ her prior to her  
7 getting her certification?

8 A. No.

9 Q. Were you able to continue with the process  
10 of securing her employment while she was  
11 awaiting her emergency certification?

12 A. Not -- I know that we could not hire her  
13 until that was taken care of.

14 Q. When you contacted the district office  
15 about her emergency certification, were you  
16 told whether or not it would be a  
17 successful process for her?

18 A. Didn't know.

19 Q. Did you continue interviewing other people  
20 for the position while waiting for her  
21 certification?

22 A. No, because that's all we had.

23 Q. Okay.

1 A. She was -- I mean --

2 Q. Okay. Had Mr. Lowe been certified in  
3 special education, would you have  
4 recommended him for the position?

5 A. Yes.

6 Q. With regard to --

7 A. Can I add to that?

8 Q. Yes.

9 A. Having -- I would have recommended him  
10 based on just our interview, but I would  
11 have checked his background, his references  
12 of where he had been, and I can't say that,  
13 you know, after that I would have. I don't  
14 know because I didn't talk to them.

15 Q. Did you check any of his references?

16 A. No, ma'am, because when I talked to Carolyn  
17 Hicks, I knew he had a history in  
18 Montgomery County. She said, I don't know  
19 if he's certified. Once she did that, I  
20 called Mr. Barker, and he said, I don't  
21 think -- I don't know about his  
22 certification. I didn't waste time calling  
23 anybody until I found out about

1 certification.

2 Q. Okay. In that interview, did you speak --  
3 did you speak to Mr. Lowe with regard to  
4 what type of position he would want,  
5 whether it be in sciences or English?

6 A. Yes, ma'am, I did ask what his strong suit  
7 was, what his basic -- you know, what he  
8 was good at at school, that stuff, you  
9 know. Because we were searching for an  
10 inclusion teacher for the four core areas,  
11 because that's what we were looking for.

12 Q. Did he advise you that he was eligible for  
13 an emergency certification?

14 A. I don't remember that, no, ma'am. I don't  
15 know. I know he said that -- I know he  
16 said that everything would be in order, but  
17 I don't -- you know...

18 Q. Okay. Did you ever speak to Mr. Lowe after  
19 this initial interview process or this  
20 initial interview?

21 A. I want to say I talked to him once on the  
22 phone, but I don't know. I know he called  
23 several times and talked to my secretary.

1 I know he came several times and sat  
2 outside my office and waited for me to  
3 be -- to try to be through with my  
4 interviews.

5 Q. Did you ever speak to him on any of these  
6 occasions?

7 A. Actual call him in to talk to him, no,  
8 ma'am.

9 Q. Did you ever have any passing conversations  
10 with him when he was waiting outside your  
11 office?

12 A. I think I spoke one time on the way between  
13 interviewing other people, I think.

14 Q. Do you recall the context of that  
15 conversation?

16 A. Hey, how are you. You know, I don't...

17 Q. Did you ever express to Mr. Lowe your  
18 interest in hiring him for this position?

19 A. I told him, like I said, that day that as  
20 soon as we got everything in order, we  
21 would see what we could do. Other than  
22 that, no, ma'am.

23 Q. Okay. With regard to the hiring process,



1           one candidate that fits what we need.

2       Q.    So there have been situations where you've  
3           given just one name to Mr. Barker?

4       A.    Yes, ma'am.

5       Q.    And was that person placed in the position  
6           that you recommended them for?

7       A.    Yes, ma'am.

8       Q.    Has there ever been a time when you've  
9           recommended somebody for a position and  
10          they were not placed in that position?

11      A.    No, ma'am.

12      Q.    Was there an assistant principal position  
13          available at Lee -- no --

14      A.    Lee High.

15      Q.    Lee High in 2005, the same summer?

16      A.    Yes, ma'am.

17      Q.    Was that position posted?

18      A.    Yes, ma'am.

19      Q.    And did Melvin Lowe respond?

20      A.    Yes, ma'am. He contacted my secretary and  
21          said he wanted to be considered for the  
22          position.

23      Q.    Did he ever set up an interview with you?

1 A. I think he did, but I canceled it.

2 Q. And why was the interview canceled?

3 A. Because during the time of the opening for  
4 the special ed, not trying to be rude  
5 towards Melvin, but he badgered the crap  
6 out of me and my secretary. And it was  
7 obvious to me he could not follow  
8 directions, what I had told him to do, so I  
9 did not want him as an administrator at my  
10 school.

11 Q. Did you ever advise Mr. Lowe as to why the  
12 interview was canceled?

13 A. I didn't, no, ma'am.

14 Q. How many applicants did you consider for  
15 that position?

16 A. Considered? There was about 12 that called  
17 that I talked with maybe on the phone or  
18 read their resumes, but there was only -- I  
19 think there was five or six I interviewed,  
20 came in.

21 Q. And who did you ultimately recommend for  
22 this position?

23 A. John Johnston.

1 Q. So you had never spoken to anyone at  
2 central office about any candidate in  
3 particular?

4 A. No, ma'am.

5 Q. Okay. After you decided on Mr. Johnston,  
6 what was the next step as far as hiring  
7 him?

8 A. I recommended -- I gave him the --  
9 actually, I gave him -- during that time, I  
10 gave him a ranking of two that I would  
11 take, and I told him that I -- you know, I  
12 really preferred Mr. Johnston. So that's  
13 what -- I guess it went through the chain  
14 then.

15 Q. And when you say you gave him, are you  
16 referring to Mr. Barker?

17 A. Yes. I'm sorry.

18 Q. Okay. Who was the other person that you  
19 recommended aside from Mr. Johnston for  
20 this position?

21 A. I believe it was Ron Ashley.

22 Q. Okay. And was Mr. Johnston hired for the  
23 administrative assistant --

1 A. Yes, ma'am.

2 Q. -- I mean, assistant principal position?

3 A. Yes, ma'am.

4 Q. Is he still in that position?

5 A. Yes, ma'am.

6 Q. Had Mr. Barker or Carolyn Hicks ever said  
7 anything to you at all about Melvin Lowe?

8 A. Other than the conversation about the  
9 question of certification.

10 Q. And tell me again what you remember about  
11 that conversation.

12 A. Okay. The first one, Carolyn Hicks. I  
13 called and she -- I mentioned -- I said,  
14 I've got a special ed job. I said, I want  
15 to look at hiring Melvin Lowe or see what I  
16 need to do, check, whatever. And she said,  
17 I don't believe he's certified. You need  
18 to check with Mr. Barker. So I hung up.

19 I contacted Mr. Barker. He said, I  
20 don't -- he said the same thing, I don't  
21 believe he's certified, but I will check  
22 with Ms. Jackson, Cynthia. So then I want  
23 to say either that afternoon or the next

1 get emergency certification?

2 A. Unh-unh (negative response).

3 Q. Yes or no.

4 A. No.

5 Q. And all of them had prior special education  
6 teaching experience except for Ms. McCall?

7 A. Yes. As far as I know, yes, ma'am. And  
8 Ms. McCall actually had some -- she was an  
9 aide that worked with special education  
10 classes.

11 Q. Did Mr. Barker ever tell you that you  
12 couldn't hire Melvin Lowe?

13 A. No.

14 Q. Did he ever talk to you about a lawsuit or  
15 anything Melvin Lowe had done against the  
16 school system?

17 A. No.

18 Q. Do you know Melvin Lowe's mother?

19 A. Yes.

20 Q. Do you know anything about any lawsuit  
21 she's ever filed against the school system?

22 A. No.

23 Q. When you interviewed Melvin Lowe, did you

1 know if he had filed an EEOC charge or a  
2 lawsuit against the school system?

3 A. No.

4 Q. More specifically, because I don't know if  
5 we got it on the record, did anybody ever  
6 tell you that you couldn't hire Melvin as  
7 an assistant principal?

8 A. No, ma'am.

9 Q. Did you converse with anybody about your  
10 decision to cancel that interview other  
11 than your secretary?

12 A. No, ma'am.

13 Q. What is the race and sex of John Johnston?

14 A. White male.

15 Q. Okay. That's it.

16 MS. DUGAS: I have a couple  
17 questions.

18 EXAMINATION

19 BY MS. DUGAS:

20 Q. The science teacher that you hired, was her  
21 name withdrawn after you realized -- after  
22 you found out she did not have  
23 certification?

1 A. No, ma'am.

2 Q. Were there any steps taken to stop the  
3 hiring process pertaining to this teacher  
4 while awaiting her certification?

5 A. Explain that, please.

6 Q. Did you notify central office that this  
7 individual did not have the proper  
8 certification?

9 A. Yes. Yes, I did.

10 Q. And what happened in the interim while you  
11 were awaiting the emergency certification?

12 A. Just waiting for her to get certification.  
13 There was nothing -- you know, nothing  
14 to -- kept looking for a science teacher,  
15 but we didn't find any.

16 Q. And with regard to Ms. McCall, you stated  
17 that she had been a special ed aide in your  
18 school --

19 A. Yes, ma'am.

20 Q. -- prior to her becoming a special ed  
21 teacher?

22 A. Yes, ma'am.

23 Q. And is it a good practice as principal to

1 Q. This science teacher that we've been  
2 talking about in the summer of 2004 for I  
3 guess the 2004-2005 school year, you said  
4 you kept looking for a science teacher in  
5 the meantime; is that correct?

6 A. Let me rephrase that. A chemistry teacher.

7 Q. A chemistry teacher?

8 A. Because science is different from  
9 chemistry. You know what I'm saying.

10 Q. And just for clarification. If you had  
11 interviewed a teacher that was certified in  
12 chemistry, would you have hired that person  
13 as long as they were qualified to teach  
14 chemistry?

15 A. Once again, in hiring, probably so,  
16 depending on if everything else checks out,  
17 you know; she's not a person that's not  
18 ever at work, if she's not a person that  
19 you can depend on.

20 Q. Well, I guess for clarification --

21 A. All things being equal, if you have the  
22 science teacher I hired and this other lady  
23 that's certified, yes, I would have hired



1 the lady that was certified rather than  
2 going through the emergency deal.

3 Q. Okay. Thanks.

4 MS. DUGAS: Okay. I have just a  
5 clarification question on  
6 that.

7 EXAMINATION

8 BY MS. DUGAS:

9 Q. So if a chemistry certified teacher had  
10 come in with the requisite certification  
11 and experience during the process that you  
12 were awaiting emergency certification for  
13 this current teacher, if for some reason  
14 you didn't feel as comfortable with the  
15 certified teacher, you would have continued  
16 the process for the emergency certification  
17 for the teacher that you had hired?

18 MS. CARTER: Object to the form.

19 Go ahead.

20 A. Okay. Now, when you say feel as  
21 comfortable, if I had called a previous  
22 employer and a previous employer had said,  
23 you know, there's 180 school days and she's